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No. 25

In the Supreme Court of the United States

OCTOBER TERM, 1939

VALVOLINE OIL COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	3
The proceedings	3
The evidence	6
Summary of argument	11
Argument:	
Introductory statement	17
I. Valvoline is subject to the Interstate Commerce Act under the provisions of Sections 1 (1) (b) and 1 (3)	20
II. The order of the Commission does not impair the constitutional rights of appellant:	
1. The only constitutional issue presented is the validity of Section 19a (e)	31
2. Considered by itself, Section 19a (e) does not impair the constitutional rights of appellant	37
3. The principal regulatory provisions of the Act are constitutional as applied to the appellant	37
Conclusion	47
Appendix A	48
Appendix B	53

CITATIONS

Cases:

Alton R. Co. v. *United States*, 287 U. S. 229 — 19

Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288 — 15, 33, 34

Blackmer v. *United States*, 284 U. S. 421 — 36

Brass v. *Stoeser*, 153 U. S. 391 — 43, 46

Budd v. *New York*, 143 U. S. 517 — 44

California v. *Latimer*, 305 U. S. 255 — 12, 15, 17, 18, 33

Carmichael v. *Southern Coal & Coke Co.*, 301 U. S. 495 — 45

Electric Bond & Share Co. v. *Securities and Exchange Commission*, 303 U. S. 419 — 15, 18, 33, 35, 37

Hatch v. *Reardon*, 204 U. S. 152 — 36

Heald v. *District of Columbia*, 259 U. S. 114 — 15, 35, 36

Interstate Commerce Commission v. *Goodrich Transit Co.*, 224 U. S. 194 — 19, 27

Cases—Continued. Page

Jeffrey Mfg. Co. v. *Blagg*, 235 U. S. 571 ..... 15, 35, 36
Munn v. *Illinois*, 94 U. S. 113 44
Myers v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41 ..... 12, 17
National Labor Relations Board v. *Fainblatt*, 306 U. S. 601 .. 16, 39
Nebbia v. *New York*, 291 U. S. 502 46
Norfolk & Western Ry. Co. v. *United States*, 287 U. S. 134 .. 19
Pennsylvania R. R. Co. v. *Public Utilities Commission of Ohio*, 298 U. S. 170 39
Petroleum Exploration, Inc. v. *Public Service Commission*, 304 U. S. 209 ..... 12, 17
Pierce Oil Co. v. *Phoenix Refining Co.*, 259 U. S. 125 ..... 16, 41
The Pipe Line Cases, 234 U. S. 548 ..... 12, 13, 16, 19, 20, 22, 23, 24, 26, 27, 30, 38, 39, 40, 43, 53
Prairie Oil & Gas Co. v. *United States*, 204 Fed. 798 54
Premier-Pabst Sales Co. v. *Grosscup*, 298 U. S. 226 35
Purity Extract Co. v. *Lynch*, 226 U. S. 192 45
Rochester Telephone Corp. v. *United States*, 307 U. S. 125 .. 18
South Carolina State Highway Department v. *Barnwell Bros., Inc.*, 303 U. S. 177 45
Standard Oil Co. v. *United States*, 221 U. S. 1 53
Tidewater Pipe Co. v. *Board of Review*, 311 Ill. 375, 143 N. E. 87 27
United States v. *Carolene Products Co.*, 304 U. S. 144 45
United States v. *Hill*, 248 U. S. 420 ..... 16, 39
United States v. *Los Angeles R. R.*, 273 U. S. 299 18
United States v. *Simpson*, 252 U. S. 465 ..... 16, 39
United States v. *Uncle Sam Oil Co.*, 234 U. S. 548 29
Yazoo & M. V. R. Co. v. *Jackson Vinegar Co.*, 226 U. S. 217 .. 15, 35, 36

Statutes:

Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 210–219, U. S. C. Title 28, Secs. 47, 47 (a) 4, 18
Revenue Act of 1918, Sec. 500 (d), c. 18, 40 Stat. 1055, 1103 21
Transportation Act, 1920, c. 90, 41 Stat. 453, 456 23
Revenue Act of 1932, c. 209, Sec. 73 (a), 47 Stat. 169, 275 .. 21
Interstate Commerce Act (Feb. 4, 1887, c. 104, 24 Stat. 379, as amended; U. S. C. Title 49, Secs. 1, 19a).
Sec. 1 ..... 3, 12, 21, 35, 48
Sec. 19a 2, 3, 4, 15, 16, 18, 31, 32, 34, 35, 36, 37, 50

Miscellaneous:

40th Cong. Rec. 6361, 6365–6366, 7000 ..... 54, 55, 56, 57
Conference Report No. 546, to accompany H. R. 10453, 66th Cong., 2d Sess. 24
Sharfman, The Interstate Commerce Commission, Vol. III–A, p. 116 35
Splawn, *Report on Oil Pipe Lines*, H. R. 2126, 72d Cong., 2d Sess. 31

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OPINION BELOW

The opinion of the specially constituted District Court (R. 112–120) is reported in 25 F. Supp. 460. The reports of the Interstate Commerce Commission, upon which the challenged order is based (R. 12–19, 23–31), are published in 47 Val. Rep. 534 and 48 Val. Rep. 10.

JURISDICTION

The final decree of the District Court was entered December 29, 1938 (R. 120). Petition for appeal was filed February 20, 1939 (R. 126), and was

allowed the same day (R. 126–127). Jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210–219, U. S. C., Title 28, Secs. 47 and 47 (a)), and under Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, U. S. C., Title 28, Sec. 345). This Court noted probable jurisdiction on April 17, 1939.

QUESTIONS PRESENTED

1. Is appellant subject to the Interstate Commerce Act under the provisions of Section 1 (1) (b) and 1 (3)?

2. If appellant is subject to the Act, are its constitutional rights invaded by an order of the Interstate Commerce Commission, issued under Section 19a (e), requiring it to furnish certain information?

3. May appellant question the validity of provisions of the Act other than Section 19a (e); and if so, are they constitutional as applied to it?

STATUTES INVOLVED

The provisions of the Interstate Commerce Act (February 4, 1887, c. 104, 24 Stat. 379, as amended; U. S. C., Title 49) primarily involved are found in Sections 1 (1), 1 (1) b, 1 (3), 19a (a) and 19a (e), which provide in part as follows:

> SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—
>
> * * * * *

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *.

(3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire.

* * * * *

SEC. 19a. (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part * * *

(e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier * * *.

Other pertinent provisions of the Interstate Commerce Act are set out in Appendix A, *infra*, pp. 48–52.

STATEMENT

1. The Proceedings.—This is an appeal from the final decree of a three-judge district court for the

Western District of Pennsylvania, convened under the Urgent Deficiencies Act (c. 32, 38 Stat. 210–219, U.S.C., Title 28, Secs. 47, 47 (a)), dismissing for want of equity a petition to enjoin and annul an order of the Interstate Commerce Commission entered June 6, 1938. The order required appellant, hereinafter referred to as "Valvoline," to file with the Commission within a specified time certain maps, charts, and schedules required for the valuation of its pipe-line property under Section 19a of the Interstate Commerce Act.

The order was issued under the following circumstances:

Pursuant to its statutory duty "to investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions" of the Interstate Commerce Act,[1] the Commission had, on December 31, 1934, issued "Valuation Order No. 26—Revised" (R. 9–10), requiring all pipe-line companies subject to the Act to prepare and file with the Commission maps, charts, and schedules of their properties not less than sixty days after receiving written notice from the Director of the Commission's Bureau of Valuation. Served with this notice in January 1936, Valvoline asserted that it was not subject to the Act and petitioned the Commission to determine

[1] Section 19a of the Interstate Commerce Act, *infra*, p. 50.

its status (R. 1). The Commission granted the petition and, after full hearing before Division 1, issued a report dated February 2, 1937 (R. 12–19), holding that Valvoline is "engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act," and "should, therefore, comply with our Valuation Order No. 26 and furnish promptly the information called for therein" (R. 19).

Evidence at this hearing disclosed that Valvoline was transporting crude oil in interstate commerce both for the use of its own refinery and for sale to an independent refining company in West Virginia (R. 42, 43). Shortly after the date of the Commission's report, Valvoline, admittedly in order to avoid being held to be a common carrier (R. 54), mechanically rerouted the oil transported to the West Virginia refinery (R. 62) so that this refinery was thereafter furnished only with oil produced in West Virginia and not moved across state lines.

Thereupon Valvoline petitioned for a rehearing alleging that this change in its operation was material to the determination of its status (R. 20). The petition was granted and a hearing was held before the full Commission. On June 6, 1938, the Commission rendered its report (R. 23–31) holding that the change in operation did not affect its prior de-

termination, and directing Valvoline to comply with "Valuation Order No. 26—Revised" within ninety days (R. 31).

Valvoline thereupon instituted this suit, seeking both an interlocutory and a permanent injunction against enforcement of the order (R. 1–8). The Commission intervened and filed an answer (R. 36, 37). By agreement of counsel and with the court's consent, a single hearing was held on the prayer for both a temporary and a permanent injunction. Valvoline introduced in evidence a certified transcript of the testimony and exhibits introduced at both hearings before the Commission. No other evidence was offered. On December 6, 1938, the court below filed its opinion, findings of fact, and conclusions of law (R. 112–120), holding that Valvoline is subject to the Interstate Commerce Act and that it is required to comply with the Commission's order. The final decree dismissing the petition was entered on December 29, 1938 (R. 120). On January 3, 1939, the court below stayed enforcement of the Commission's order pending decision by this Court (R. 124–125).

2. The Evidence.—The material facts, which are not in dispute, are as follows:

Valvoline's business originated in a partnership formed more than seventy years ago for the purpose of manufacturing lubricating oil. A small pipe line was constructed near Warren, Pennsylvania, through which oil was gathered for ship-

ment in tank cars to the company's refinery at Edgewater, New Jersey. Later a refinery was built at Warren, and some of the oil was refined there and some at Edgewater. In 1901 the company was incorporated under the laws of the State of New Jersey and by its charter was authorized to engage in the production, manufacture, and marketing of petroleum oil and its products, and to engage in "any transportation business of any kind or character whatsoever," without, however, the right of eminent domain in New Jersey. At the time of its incorporation Valvoline was refining about 22,000 barrels of oil per month (R. 89, 113).

As the demand for lubricating oil grew, the pipeline system was gradually extended southward, following the development of new oil fields in Pennsylvania, and in 1909 another and larger refinery was added at East Butler, Pennsylvania. The movement of oil in that year amounted to about 55,000 barrels per month (R. 90, 113).

Up to that time all of the oil transported by Valvoline by pipe line moved intrastate. Interstate transportation began in 1913 upon the extension of the line from Pennsylvania into West Virginia, and in 1916 the West Virginia-Ohio boundary was crossed. The last major additions were in 1925 and 1926 when a gathering system serving pools in Ritchie County, West Virginia, was purchased and lines were laid in southeastern Ohio (R. 113).

184372—39——2

At the present time Valvoline operates a connected system of pipe lines in Pennsylvania, Ohio, and West Virginia of a total length of 1,426 miles, comprising 969 miles of 2-inch pipe, 426 miles of 3-inch pipe, and 31 miles of 4-inch pipe (Exhibit 15). Through these lines it transports approximately 75,000 barrels of oil per month (R. 65), of which approximately 50% moves across state lines. About 50% of the oil transported originates in Pennsylvania, 38% in West Virginia, and 12% in Ohio (R. 48, 113).

Several other oil pipe lines, both common carrier and private, extend through, or in close proximity to, the fields served by Valvoline. The common carriers have trunk lines of from 3 to 12 inches in diameter and carry a much larger volume of oil than is transported by Valvoline. None of them, however, serves the wells from which Valvoline receives its oil (R. 45, 113–114).

Valvoline is not a producer of oil. From the inception of the enterprise it has been its practice to purchase all of the crude oil which it uses directly from producers in the field and to carry in its pipe lines only oil of which it is the owner (R. 48, 114).

For its manufacturing purposes Valvoline prefers a select grade of oil of a light amber color. Some of the oils produced along its pipe lines are not satisfactory because they are too dark or contain undesirable ingredients difficult to eliminate in the refining process. It refuses to buy or admit into its lines oils that do not meet its specifications

and the producers of such oil must, therefore, find an outlet through other pipe lines and sales to other refineries. Several instances of rejections of oil by Valvoline are mentioned in the record (R. 43, 46). However, any producer within reasonable distance of Valvoline's lines, having oil of the desired quality and not already receiving pipe-line service, is afforded a market for its oil through sale to Valvoline. One officer of the company testified (R. 43): "We have never rejected a well producing the kind of oil we need," and another stated (R. 47): "Once we have connected with a well which produces oil of the quality we desire, we handle all of the oil produced if he wants to give it to us." Valvoline pays the posted market price for the oil it purchases, except that producers whose wells are located in Ohio or West Virginia, or in Pennsylvania south of the Butler-Allegheny County line, receive a premium of 5 cents per barrel over this posted price (R. 45, 114).

In November 1937 Valvoline's pipe lines were serving exclusively 9,020 wells. These were mostly so-called stripper wells of small output, the average daily run for all of the wells being less than half a barrel per day per well. In the purchase of the output of these wells, Valvoline has dealings with and accounts to 2,014 royalty owners and 1,751 lease operators. These owners and operators have no other present outlet for their oil. In the event Valvoline should refuse to accept it they could re-

ceive service from one of the other pipe-line companies but only if they were able to tender at least 5 barrels per day per mile of pipe-line extension necessary to make the connection. Since the average run of oil from the wells is much less than this amount, this requirement would deprive many of the producers of a pipe-line outlet and a market for their oil, should Valvoline refuse to carry it (R. 58, 114–115).

In 1932 economic conditions brought about a curtailment of operations, and the refinery at Warren was closed. Valvoline, instead of limiting its purchases to the quantity of oil that could be refined at East Butler, continued as before to purchase all oil of suitable grade offered in order not to lose the good will of the producers (R. 47). The result was that it received, and has continued to receive, an excess of oil over its ability to refine. Having no use for this oil in its own operations, it entered into arrangements with the Pennsylvania Refining Company at Karns City, Pennsylvania, and with the Ohio Valley Refining Company at St. Marys, West Virginia, under which it sells and delivers to those companies the excess of oil over its own requirements. The oil sold to the Pennsylvania Refining Company all originates in Pennsylvania, and its movement through Valvoline's lines is intrastate. At the time of the first hearing before the Interstate Commerce Commission some of the oil sold to the Ohio Valley Refining Company origi-

nated in Ohio and moved across the Ohio-West Virginia State line. After that hearing, admittedly in order "to avoid any question of our status being held as a common carrier" (R. 54), Valvoline altered its operations so that oil delivered to this refinery consists exclusively of oil originating in West Virginia.[2] In the case of both refineries the oil is sold at delivered prices, which include amounts to cover the cost of transportation (R. 51, 115).

Valvoline has never exercised the right of eminent domain. Its pipe lines have been laid over privately acquired easements and rights-of-way (R. 44). The arrangements under which it has laid its lines across public highways, rivers, and lines of other carriers do not appear of record.

Valvoline has never filed tariffs or reports with the Interstate Commerce Commission or with any other regulatory body (R. 50).

SUMMARY OF ARGUMENT

In three recent decisions this Court has held that the expense of furnishing information of the type required of appellant by the Commission's order

[2] This change was effected by a simple mechanical process. The oil from Ohio is periodically held up in a tank at Bens Run, West Virginia, until oil for the West Virginia refinery can be pumped in the opposite direction from the West Virginia lines. When delivery is completed, the Ohio oil is released, mingled with West Virginia oil, and later with Pennsylvania oil, and transported to the Valvoline refinery at East Butler (R. 62).

does not constitute such substantial and irreparable injury as to justify equitable relief. *Petroleum Exploration, Inc.* v. *Public Service Commission,* 304 U. S. 209; *California* v. *Latimer,* 305 U. S. 255; *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41. Since this expense is the only injury of which appellant may complain, its suit should be dismissed if it is governed by the ordinary principles of equitable jurisdiction. This Court has never decided, however, whether those principles apply to a suit which is brought under the Urgent Deficiencies Act to review an order of the Interstate Commerce Commission. It appears to have been general practice for a number of years to assume that the courts have jurisdiction over such a suit if only the order involved is final and the petitioner has a legal right or interest injuriously affected thereby. In view of this circumstance and because, in the opinion of the Interstate Commerce Commission, administrative convenience will be served by review of the particular order here involved, the Government does not insist upon this preliminary jurisdictional question but seeks a decision on the merits.

I

That appellant is subject to the Interstate Commerce Act under the provisions of Sections 1 (1) (b) and 1 (3) is clear both from the language of the Act and from the decision of this Court in *The Pipe Line Cases,* 234 U. S. 548. The Act applies to

"common carriers engaged in * * * transportation of oil * * * by pipe line" between the states, and "common carrier" is defined as including "all pipe-line companies." Since Valvoline is a pipe-line company engaged in the interstate transportation of oil, it comes directly within the statutory definition. Valvoline's contention that the Act applies only to those already engaged in pipe-line transportation as common carriers finds no support in the language of the statute and is precisely the argument which this Court rejected in *The Pipe Line Cases*, 234 U. S. 548. While the applicable sections of the Act have been amended in minor details since that decision, the amendment simply clarifies the language of the statute and does not make any important change in policy. Indeed, the Act as amended even more clearly applies to appellant than it did prior to its revision.

The further contention that *The Pipe Line Cases* are not decisive because appellant's operations differ from those of the companies there involved cannot be maintained. That decision was premised upon the principle that the provisions of the Act "apply to any person engaged in the transportation of oil by pipe line." Moreover, the Court there sustained the Act in its application to Tidewater Pipe Company, Ltd., whose operations were essentially the same as those of Valvoline.

Any lingering doubt that appellant is subject to the Act is dispelled by the legislative history of the

statute which conclusively shows that the very two factors upon which Valvoline principally relies to exempt its operations from the Act—its common ownership and control of refinery and pipe line and its policy of transporting no oil other than its own—were the fundamental cause of the mischief at which the statute was directed.

II

There is no dispute that, if Valvoline is subject to the Act, the Commission had statutory authority under Section 19a (e) to enter the order here contested. The issue as to the validity of the order relates solely to its constitutionality.

Appellant argues that in deciding this issue the validity of the entire Act must be determined. It asserts that the order serves to change its status from that of a private to that of a common carrier, and thus can be supported only if Valvoline can constitutionally be required to assume the obligations of a common carrier under the Act. Moreover, it asserts that Section 19a (e) is inseparable from the principal regulatory provisions of the Act and that if those provisions fail Section 19a (e) must likewise fail.

We take issue with appellant on both propositions. The Commission's order does not change appellant's status at all; it simply recognizes appellant to be a pipe-line company subject to the Act.

It is the Act, not the order, which determines appellant's obligations. The Commission has taken no action with respect to Valvoline under any provision other than Section 19a (e) and may never be called upon to take such action. Appellant itself admits that it cannot now be predicted in what manner or how seriously it may be affected by the requirements of the Act. Under these circumstances, a decision on the constitutionality of the entire statute would be an advisory opinion upon a hypothetical state of facts. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324; *Electric Bond and Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419; *California* v. *Latimer,* 305 U. S. 255.

The question is not affected by the separability or inseparability of Section 19a (e). Whether that Section is separable in the sense that it could stand alone if the remainder of the Act were held invalid, need not now be determined; whether separable or not, the present exercise of authority under that Section cannot be invalidated on the ground that at some future time appellant's rights may be invaded in the administration of other sections of the Act. Appellant may contest the validity of only that provision which presently causes it injury. *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571; *Heald* v. *District of Columbia,* 259 U. S. 114; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.,* 226 U. S. 217.

Since Section 19a (e) is admittedly valid in its application to appellant, we believe that the decree below must necessarily be affirmed.

Affirmance is required even if it be held that appellant has standing in this proceeding to question the validity of sections of the Act not now affecting it. There can be no dispute that Valvoline is engaged in interstate commerce; that it transports its own oil over its own lines does not prevent that transportation from being interstate commerce or exempt it from federal regulation. *The Pipe Line Cases*, 234 U. S. 548; *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601. Nor can there be doubt that the regulation imposed upon that commerce by the Pipe-Line Amendment does not constitute a violation of due process. In *The Pipe Line Cases, supra*, p. 561, this Court said: "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid." See also *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125. Since Valvoline did not commence interstate transportation of oil by pipe line until after the effective date of the Pipe-Line Amendment, these decisions are decisive of its validity as applied to appellant.

Even apart from this consideration, no violation of due process is involved. The purpose of the statute—to free the channels of interstate oil transportation from abuses which had arisen

through common control of pipe line and refinery—is clearly within the Congressional competence, and the provisions of the Act as applied to apellant have a real and substatntial relation to that object.

ARGUMENT

Introductory Statement

Appellant presents the contentions in its brief that it is not subject to the provisions of the Interstate Commerce Act and that, if it is, the Act as applied to it is unconstitutional. We believe both contentions to be demonstrably unsound and that the decision below on the issues so posited is clearly correct.

Before proceeding to discuss these issues, however, a preliminary point of equity jurisdiction must be considered. In three recent decisions this Court has held that the expense of furnishing information of the type required of appellant by the Commission's order does not constitute such substantial and irreparable injury as to justify equitable relief.[3] *Petroleum Exploration, Inc.* v. *Public Service Commission,* 304 U. S. 209; *California* v. *Latimer,* 305 U. S. 255; *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41. Since this

[3] The only allegation of the petition with respect to the expense of furnishing the information is that it would require the "expenditure of large sums of money" (Petition, Par. IX, R. 7), and the only direct testimony on the question is the statement of appellant's vice-president that "It would mean a terrific expense to gather this information" (R. 65).

expense is the only injury of which appellant may complain in the present case,[4] its suit should be dismissed if standing to maintain the suit depends upon the ordinary principles of equitable jurisdiction.

The question whether the ordinary prerequisites of equitable relief apply to a proceeding under the Urgent Deficiencies Act (38 Stat. 210, U. S. C., Title 28, Secs. 45, 47) to review an order of the Interstate Commerce Commission has never been determined by this Court. In several cases the Court has indicated that such a proceeding is equitable in nature. See *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 132; *United States* v. *Los Angeles R. R.*, 273 U. S. 299, 315. In the *Rochester Telephone* case the Court stated (p. 132)

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[4] There can be no contention that the mere existence of the statute (enacted in 1906) creates presently threatened irreparable injury. See *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. Nor, as pointed out below, can it be maintained that the Commission's order serves to change appellant's status from that of a private to that of a common carrier and thus subjects it to irreparable injury from provisions of the Act other than Section 19a (e) under which the Commission's order was issued. The Commission has taken no action with respect to appellant under any other section, has made no order requiring a change in the company's mode of operation, and no demand or request for transportation service has ever been made upon the company. There is thus an entire want of any threat of injury, irreparable or otherwise, from the change in status which appellant erroneously claims the Commission ordered. *California* v. *Latimer*, 305 U. S. 255; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419.

that, where review is sought under the Urgent Deficiencies Act of an order of the Interstate Commerce Commission denying complainant's claim that is not within the statute, the complainant to secure relief must show "the conventional requisites of equity jurisdiction." Moreover, in *Alton R. Co.* v. *United States*, 287 U. S. 229, 240, Mr. Justice Brandeis, holding that the order there involved was reviewable under the Urgent Deficiencies Act, pointed out that "It subjects the Alton to damage which is substantial, immediate and irreparable." On the other hand, in several cases, this Court has reviewed orders of the Interstate Commerce Commission which seem to have involved no threat of irreparable damage, although the point of equitable jurisdiction was not raised or discussed. See, *e. g., Norfolk & Western Ry. Co.* v. *United States*, 287 U. S. 134; *The Pipe Line Cases*, 234 U. S. 548; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194. Moreover, in practice, petitions to review orders of the Interstate Commerce Commission under the Urgent Deficiencies Act have been treated as petitions as of right if only the order is final and the petitioner has a legal right or interest that will be injuriously affected by the order.

Because of this practice and because, in the opinion of the Interstate Commerce Commission, administrative convenience will be served by a review of the particular order which is here involved, the

Government does not urge affirmance of the decree upon the ground that appellant has not shown irreparable injury. Affirmance is in any event required on the merits.

I

VALVOLINE IS SUBJECT TO THE INTERSTATE COMMERCE ACT UNDER THE PROVISIONS OF SECTIONS 1 (1) (b) AND 1 (3)

That Valvoline is a common carrier within the definition of the Interstate Commerce Act is determined by the language of the statute itself and by the direct adjudication of the question by this Court in *The Pipe Line Cases,* 234 U. S. 548. And lingering doubt, if any there be, is effectively laid to rest by the legislative history of the statute.

The pertinent provisions of the Act follow (Sections 1 (1) (b) and 1 (3)):

> SEC. 1 (1) That the provisions of this part shall apply to common carriers engaged in—
>
> * * * * *
>
> (b) The transportation of oil * * * by pipe line * * * from one state * * * of the United States * * * to any other state * * of the United States. * * *
>
> (3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire.

That Valvoline is a pipe-line company engaged in the interstate transportation of oil is not challenged.[5] Authorized by its charter to "engage in * * * any * * * transportation business of any kind or character whatsoever" (R. 83), it operates a connected system comprising 1,426 miles of pipe line, through which approximately 75,000 barrels of oil are transported each month hundreds of miles from points of origin to points of destination (R. 44, 55). Fifty percent of the oil so transported moves across state lines (R. 48).

The fact that Valvoline is a pipe-line company is determinative of the fact that it is a common carrier within the meaning of the Act; Section 1 (3) expressly directs that the term "common carrier * * * shall include all pipe-line companies."

Valvoline's contention is that the term "pipe-line companies" is modified by the clause "and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." The contention entirely overlooks the fact that the quoted phrase is not a modifying dependent clause but an independent clause in the conjunctive. Its plain intent is to bring within the

[5] It is significant that Valvoline pays a federal tax (R. 15) imposed upon "all transportation of crude petroleum and liquid products thereof by pipe line." Revenue Act of 1932, Sec. 73 (a), 47 Stat. 275. Prior to 1932, the tax was imposed upon all "transportation of oil by pipe line." Revenue Act of 1918, Sec. 500 (d), 40 Stat. 1103.

definition persons *in addition* to those specifically enumerated in the preceding part of the definition. The term "such transportation" refers to the "transportation" described in Section 1 (1) and (2); there is no mention of "transportation" in the preceding portion of Section 1 (3).

Valvoline's contention is precisely the argument which this Court rejected in *The Pipe Line Cases*, 234 U. S. 548. That case, like this, involved construction of Section 1 of the Interstate Commerce Act; the only distinguishing feature, and that adverse to appellant, is that at the time the decision was rendered the language of Section 1 gave superficial plausibility to the view that only common carriers, as that term is understood at common law, were included. The section at that time read in part as follows (34 Stat. 584):

> That the provisions of this Act shall apply to any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act.

This Court construed that provision to cover all pipe-line companies, whether operating as common carriers or not. It stated, 234 U. S. at 559, 560:

> The provisions of the act are to apply to any person engaged in the transportation of

> oil by means of pipe lines. The words who shall be considered and held to be common carriers within the meaning and purpose of this act obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but *an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.* [Italics supplied.]

There is no merit in Valvoline's argument that the Transportation Act of 1920 (41 Stat. 456) so revised the language of Section 1 as to narrow its scope; the section as it now stands is even more clearly applicable to Valvoline than it was prior to its revision. The purpose of the revision was obviously only simplification of language; there was no intent to reverse the legislative policy of more than a decade. The bill which became the Transportation Act of 1920 was reported to the House and Senate by their conferees with the following comment on the section embodying the revision:

> Section 400 amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and classifying language in several respects, but making no important change in policy. [Report No. 546, Nov. 10, 1919, to accompany H. R. 10453, 66th Cong., 2d Sess.].

Valvoline seeks to escape from the force of *The Pipe Line Cases* by urging that its operations are so different from those of the companies there involved that the decision is inapplicable to it. The contention disregards the decisive fact that this Court's decision was premised not so much on the operations of the particular pipe-line companies before the Court as upon the principle that the provisions of the Act "apply to any person engaged in the transportation of oil by means of pipe lines."

Beyond this, the contention is unsound because appellant's assertion that its operations differ from those of the companies involved in *The Pine Line Cases* is contrary to fact.* Two of the companies, the Prairie Oil & Gas Co. and the Ohio Oil Co., were engaged solely in transportation. The oil purchased by them at the wells or from connecting carriers was sold again at the end of their lines. They operated no refineries. In this respect their operations may be distinguished from Valvoline's. But the decision of the Court holding the Tidewater Pipe Company, Ltd., subject to the Act is directly in point, since in no essential respect

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*The facts as to the operations of the several companies are not stated in the majority opinion, but some reference is made thereto in the dissenting opinion of Mr. Justice McKenna (pp. 567–570) and they are briefly stated in the opinion of the Commerce Court, 204 Fed. 798, 802–803. In stating the facts of the case in the text of this brief we have had recourse not only to the opinion of the Commerce Court but also to the record in this Court, No. 508, Oct. Term, 1913.

did the business of Tidewater differ from that of Valvoline.

Tidewater's lines extended from points of origin in Illinois, Pennsylvania, and New York to its refinery at Bayonne, New Jersey. It never operated as a carrier for hire, and carried only its own oil for the use of its own refinery. It possessed no right of eminent domain; all of its lines were built upon private rights-of-way or on purchased land. Like Valvoline, Tidewater's refinery was designed to refine only certain grades of oil. Its pipe lines extended only to those fields which produced sweet or nonsulphurous oil suitable for its refinery, and it contended that if its lines were used to transport sour or sulphurous oil as well, the sweet oil would be contaminated and the company subjected to irreparable loss.

In two respects Tidewater's claim for exemption as a purely private line was stronger than the claim advanced by Valvoline. Unlike Valvoline, it did not purchase all of its oil from the public, but was itself the owner of large producing acreage in Pennsylvania and Illinois, and, unlike Valvoline, it did not sell any oil transported by it to other refineries. Its own refinery consumed the entire capacity of its lines.

The actual operation of Tidewater's lines differed from Valvoline's operation in only two respects, neither of which is determinative: (1) the

volume of oil transported was much greater, but the language of the statute clearly does not tolerate any limitation of degree; and (2) Tidewater's lines were connected with other pipe-line systems, but the oil so received was purchased at the connection points and transported over Tidewater's lines to its refinery as its own oil. The only effect of its connection with other pipe-line systems, therefore, was to afford a market to a greater number of producers than would otherwise have been the case.[7]

The essential feature of Tidewater's operation, which this Court held determinative of its status under the statute, was that it afforded a market to the producing public and was, in the words of the Court (p. 559), carrying "a great subject of international commerce coming from many owners but * * * carrying it all as its own." Valvo-

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[7] It cannot be contended that Tidewater was held subject to the Act on the ground that it was part of the Standard Oil Company system and monopoly by reason of the fact that Standard Oil controlled 30% of the stock of the Tidewater refinery. In the anti-trust action which the Government brought against the Standard Oil Company and its subsidiaries to dissolve their monopoly, Tidewater was made a party defendant. The action was dismissed as to it at the conclusion of the evidence upon the finding of the trial court that Tidewater had not "been proved to be engaged in the operation of carrying out the combination" (Record, *United States* v. *Standard Oil Co.*, No. 398, Oct. Term, 1910, Vol. 17, p. 525). That decision was rendered four years prior to the decision in *The Pipe Line Cases*.

line is performing this identical function on a smaller scale.[8]

Valvoline relies upon that part of the decision in *The Pipe Line Cases* which held that the Uncle Sam Oil Company did not come within the terms of the Act. This Company operated a three-inch pipe line from its own oil wells near Bartlesville, Oklahoma, a distance of about 60 miles to its refinery at Cherrydale, Kansas. The company purchased no oil.[9] No other producer or member of the oil shipping public was directly or indirectly

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[8] Appellant cites the decision of the Supreme Court of Illinois in *Tidewater Pipe Co.* v. *Board of Review*, 311 Ill. 375, 143 N. E. 87, and a curious dictum in the opinion to the effect that Tidewater is not a "common carrier" under the Pipe-Line Amendment because it transports only its own oil over its own lines to its own refinery. Apparently, that court inadvertently overlooked the fact that this very company had been held subject to the Act by this Court in *The Pipe Line Cases*. The dictum was merely an incidental expression of opinion, not germane to the decision, the question at issue being whether oil purchased by the company in Illinois and stored for a long period of time prior to its movement out of the state, was taxable by Illinois. The court made it clear that its decision that the oil was taxable did not turn upon the status of the company as a private or common carrier.

[9] In its brief (p. 14) Valvoline states, "Whether the Uncle Sam Oil Company transported only oil which it produced or whether it also purchased oil is not clear." This statement is based upon the opinion of the Commerce Court and upon Mr. Justice McKenna's statement in his dissenting opinion (p. 573) that "The extent to which it [Uncle Sam Oil Company] purchases oil from producers, if it does so at all, does not appear from the record." But Mr. Justice

interested in its operation or relied upon it either as a transporter or purchaser of oil.

Mr. Justice Holmes, for the Court, said (p. 562):

> This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, *and that is all,* we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end.[10] [Italics supplied.]

Holmes, for the Court, said (p. 562) that the pipe-line was "used for the sole purpose of conducting oil from its own wells to its own refinery." This was the allegation of the company's original petition for an injunction and there is no evidence in the record to the contrary. Chief Justice White, concurring, said (p. 563): "It is shown beyond question that the company buys no oil * * *." Whatever the actual fact may have been, the Court based its decision upon this assumption.

[10] Chief Justice White was of the opinion that even this company's operations fell within the meaning of the Act (p. 562), but he concurred in the result since he believed that to apply the Act to this company, whose pipe-line operations were begun prior to the passage of the statute, would

The determining factor in the *Uncle Sam Oil Company* decision was not the common ownership of pipe line and refinery. Tidewater, the Standard Oil Company of New Jersey, and the Standard Oil Company of Louisiana were all held subject to the Act, although each of them simply transported its own oil over its own lines to its own refinery. The determining factor was that the Uncle Sam Oil Company did not purchase any oil from producers, had no substantial transportation system, and had no direct or indirect relation with the producing public."[11]

Valvoline cannot be exempted from the Act on similar grounds, since it affords a market in three States for 9,020 wells and 1,751 lease operators, representing 2,015 royalty owners. It has never refused to buy and admit into its lines oil that meets its specifications (R. 43). Whatever limitation the decision in *United States* v. *Uncle Sam Oil Co.* may be deemed to have put on the literal terms of the Act, appellant, as an interstate carrier transporting for hundreds of miles "a great subject of interna-

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deprive it of its property without just compensation in violation of the Fifth Amendment.

[11] In his dissenting opinion, Mr. Justice McKenna said (p. 573): "And I take it if the companies had not made purchases of oil or refused offers of oil, they would not be held subject to the act. Such is the situation of the Uncle Sam Company and the ground of decision in regard to that company. It is not held to be within the act. * * * It may be supposed that if it venture to make purchases of oil it will lose its immunity."

tional commerce coming from many owners" (234 U. S. at 559) does not fall within it.

We believe that the language of the statute itself and the decision of this Court in *The Pipe Line Cases* conclusively refute petitioner's claim of exemption. Under these circumstances we do not feel justified in laboring the argument by tracing here the legislative background of the Act. For the convenience of the Court, the statutory history is outlined in Appendix B, *infra*, pp. 53–57.

That history has striking application to the present case, for it reveals that the very two factors upon which Valvoline principally relies to exempt its operations from the Act—its common ownership and control of refinery and pipe line and its policy of transporting no oil other than its own—were the fundamental cause of the mischief at which the statute was directed. It was not the practices of common carriers or carriers of oil for hire which called forth the legislation, but rather the duress to which well owners and independent refiners were subjected by companies whose common control of pipe line and refinery gave them the economic power both to dictate the price of oil and to insist that all oil which they transported be sold to them before its transportation.

Today, despite enactment of the statute, many, if not most, of the pipe-line companies still carry

only their own oil to their own refineries.[12] If Valvoline is exempted from the Act because it operates in this manner, the present usefulness as well as the original purpose of the Act would in large measure be defeated. Every consideration of principle and authority repels the suggestion.

II

THE ORDER OF THE COMMISSION DOES NOT IMPAIR THE CONSTITUTIONAL RIGHTS OF APPELLANT

1. The only constitutional issue presented is the validity of Section 19a (e)

There is no dispute that if Valvoline is subject to the Act the Commission had statutory authority under Section 19a (e) to enter the order here contested. The issue as to the validity of the order relates solely to its constitutionality.

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[12] See Splawn, *Report on Oil-Pipe Lines*, H. R. 2196, 72nd Cong., 2d Sess. For purposes of this report pipe-line companies were classified as (1) large and medium-sized units integrated with the oil industry; (2) partially integrated and smaller integrated units of the oil industry (in which class Valvoline was included); and (3) independent pipe-line companies. Of the first group, operating 78 percent of the pipe-line mileage, over 60 percent of the companies reported that in 1931 they carried no oil other than their own in gathering lines and about 50 percent made a similar report on the use of their trunk lines. Of the second group, owning 3.5 percent of the pipe-line mileage, 8 out of 14 companies reported that in 1931 they carried no oil other than their own in their gathering lines and 2 out 5 no oil other than their own in their trunk lines. The third group, comprising independent pipe-line companies, of course carried nothing but "outside" oil.

Appellant argues that in determining this issue the validity of the entire Act, as applied to its operations, must be determined. It advances two reasons in support of this claim. First, it asserts that the order serves to change its status from that of a private to that of a common carrier and thus can be supported only if Valvoline can constitutionally be required to assume the obligations of a common carrier under the Act. Secondly, it asserts that Section 19a (e), under which the order was issued, is inseparable from the principal regulatory provisions of the Act and that if those provisions fail Section 19a (e) must likewise fail.

We take issue with appellant upon both propositions. The Commission's order does not change appellant's status at all; it simply recognizes that Valvoline is a pipe-line company subject to the express provisions of the Interstate Commerce Act, and, as such, is required to comply with Valuation Order No. 26. Appellant's status is determined by the Act, not by order of the Commission.

Moreover, even if the order could possibly be construed as changing appellant's status from that of a private to that of a common carrier, appellant would nonetheless have no standing to call into question the validity of any provision of the Act other than Section 19a (e). The Commission has taken no action with respect to Valvoline under any other section, has made no order requiring a change in the company's mode of operation, and, as appellant states in its brief (p. 11), no demand

or request for transportation service has ever been made upon the company. Indeed, appellant itself admits (Brief 30) that "it cannot be predicted * * * in what manner or how seriously" Valvoline may be affected by the requirements of the Act. Under these circumstances, a decision on the constitutionality of the entire statute would be an advisory opinion upon a hypothetical state of facts. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419; *California* v. *Latimer*, 305 U. S. 255.

In *California* v. *Latimer, supra*, it was held that a ruling by an administrative agency that a company is subject to the statute which the agency is engaged in administering does not of itself give the company standing to secure an injunction against enforcement of the statute. Specific action by the agency in relation to the company must be shown.

The *Electric Bond & Share* case is to the same effect. There the decree which this Court affirmed in effect required the defendant companies to register under the Public Utility Holding Company Act of 1935 and thus to change their status from nonregistered companies, not subject to regulation, to registered companies subject to control by the Securities and Exchange Commission. This Court held that, despite the change of status required by the decree, defendants had no standing to seek, by way of cross-bill, an injunction against enforce-

ment of provisions applicable to them as registered companies. The Court stated (p. 443):

> By the cross bill, defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become real. We are invited to enter into a speculative inquiry for the purpose of condemning statutory provisions the effect of which in concrete situations, not yet developed, cannot now be definitely perceived. We must decline that invitation. *Anniston Manufacturing Co. v. Davis* [301 U. S. 337].

See also *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, at 324.

The question is not affected by the separability or inseparability of Section 19a (e). Whether or not that section is separable in the sense that, if the remainder of the Act were held invalid, that section could be enforced alone, need not now be determined; whether separable or not, the present exercise of authority under that section cannot be invalidated on the ground that at some future time appellant's rights may be invaded in the administration of other sections of the Act.

The question of separability appears to be nicely balanced; although the primary purpose of the information furnished under the Section is to aid the Commission in rate regulation, it also serves as the basis of reports to Congress (Section 19a (d)) and as a means of regulating pipe-line companies

through the deterrent force of publicity. Cf. *Electric Bond and Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. Moreover, the valuation made on the basis of this information may serve a multiplicity of useful purposes other than rate regulation. See Sharfman, *The Interstate Commerce Commission*, Vol. III–A, p. 116. It is significant that Section 19a (e) provides that, unless otherwise ordered by the Commission with the reasons therefor, the records and data of the Commission shall be open to examination by the public.

Even if Section 19a (e) is inseparable, however, an order issued pursuant to its provisions may not be attacked on the ground that other provisions of the Act are unconstitutional. This Court has many times reiterated the proposition that a legislative act is presumed to be constitutional until otherwise adjudged in an appropriate judicial controversy, and "that it only hears objections to the constitutionality of laws from those who are themselves affected by its alleged unconstitutionality in the feature complained of." *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226; *Heald* v. *District of Columbia*, 259 U. S. 114; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217. It follows, therefore, that for purposes of the present controversy, the provisions of the Act other than Section 19a (e) must be presumed valid. If those other provisions had in fact been struck down in actual controversy, it might be necessary to determine

whether Section 19a (e) is too fragmentary to stand alone. But until such an occasion arises, the doctrine of separability cannot be invoked to defeat enforcement of the valid provision.

The proposition that appellant apparently espouses would make it the duty of a court to examine every provision of an allegedly inseparable statute in order to determine, not whether a particular provision sought to be enjoined is constitutional, but whether there are a sufficient number of other valid provisions to make worth while the enforcement of the valid provision in controversy. No such proposition has ever been recognized.

The present situation is closely analogous to that presented in *Heald* v. *District of Columbia,* 259 U. S. 114. That case involved an attack upon a statute, constitutional as applied to the complainants but alleged to be unconstitutional in its application to others. The complainants contended, just as does appellant here, that the statute was inseparable, and that if it was invalid in part it was void *in toto.* But this Court denied injunctive relief, holding that the complainants had no standing to attack the validity of parts of the statute which did not affect them in order to nullify the part which did affect them. See also *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.,* 226 U. S. 217; *Hatch* v. *Reardon,* 204 U. S. 152; *Blackmer* v. *United States,* 284 U. S. 421. By parity of reasoning, the appellant here cannot contest the validity of sections of the Act not pres-

ently affecting it in order to nullify the particular section under which it has been ordered to furnish information.

2. Considered by itself, Section 19a (e) does not impair the constitutional rights of appellant

Since no contention is made that Section 19a (e), considered by itself, is invalid as applied to appellant, it may be assumed that its separate validity is admitted. The admission is indeed compelled since the decisions of this Court allow of no doubt that Congress may require a company engaged in interstate commerce to furnish an administrative agency with relevant information concerning its operations. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *Electric Bond & Share Co.* v. *Securities and Exchange Commission, supra.* The cases cited are conclusive that such regulation is neither beyond the commerce power of Congress nor violative of the requirements of due process. If, therefore, we are right in our view that appellant has no standing to contest the validity of any other regulatory provisions in order to nullify Section 19a (e), the decree below must necessarily be affirmed.

3. The principal regulatory provisions of the Act are constitutional as applied to the appellant

Affirmance of the decree is required irrespective of the standing of appellant, in the present proceeding, to question the validity of those sections of the Act which impose upon pipe-line companies

at least some of the obligations of a common carrier. *The Pipe Line Cases*, together with many other decisions of this Court, disclose that appellant's constitutional contentions are without substance.

The principal provisions which appellant attacks are those which require pipe-line companies, as a condition of engaging in the transportation of oil, to make their transportation facilities available to others "upon reasonable request" therefor (Section 1 (4)) and to charge "reasonable" rates for the use of their pipe lines by others (Section 1 (5)). Valvoline claims that if it is subjected to these provisions, it will be required to carry in its lines the ordinary pipe-line grade of crude oil in addition to the select grade of amber color oil which it now purchases and for which its refinery is designed. It asserts that large expenditures will be necessary to adapt its filtering, pumping, and other facilities to such operation.

It is obvious that appellant is conjuring up an entirely speculative injury on which to premise its constitutional argument. The actual fact is that Valvoline has never been requested to transport oil for anyone and that no producer or regulatory body has ever lodged a complaint against the company's present mode of operation. The Act does not automatically require Valvoline to change its operations. Valvoline may, in the first instance, file tariffs, rules, and regulations taking into account

the necessities of its own particular situation. And certainly it is fair to assume that if at some future time a request is made of Valvoline for the use of its transportation facilities, the Commission, in determining whether the request is reasonable, will give due weight to appellant's method of operation, its policy of receiving into its lines only a certain grade and color of oil, the capacity of its lines, the other facilities available, and appellant's need of oil for its own refinery. Indeed, one of appellant's own officers testified (R. 51) that "If we are treated as a common carrier, I don't believe that we will have very many receipts from transportation of other people's crude oil. Except in certain cases, the same company would necessarily continue to carry practically exclusively its own oil." It is against this factual background that appellant's arguments must be viewed.

That Valvoline, in the operation of its pipe lines, is engaged in interstate commerce is beyond dispute. The fact that it simply transports its own oil over its own lines does not prevent that transportation from being interstate commerce or exempt it from federal regulation. *The Pipe Line Cases*, 234 U. S. 548; *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601.[13] The only possible question, therefore, is

[13] Appellant cites *Pennsylvania R. R. Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, as holding that transportation by a coal company of its own coal on its own

whether the regulation imposed upon that commerce by the statute constitutes a taking of appellant's property without due process of law.

Here again *The Pipe Line Cases* furnish the definitive answer. This Court there upheld the Act against the challenge that it deprives pipe-line companies of their property without due process of law and takes such property for public use without just compensation. The Court held that there was no taking of property whatever and that "The whole case is that the appellees if they carry must do it in a way that they do not like" (p. 561). Mr. Justice Holmes, speaking for the Court, added the following emphatic dictum which, in our view, completely disposes of appellant's argument (p. 561):

> So far as the statute contemplates future pipe lines and prescribes the conditions upon

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barges down certain rivers in Pennsylvania and thence by rail over its own private tracks to Ohio was not "in commerce" (Brief 21). This interpretation of the decision is contradicted by the language of the opinion. Mr. Justice Cardozo stated (p. 174): "The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission." The Court construed the Act as applying to rail and water transportation only when conducted by common carriers. Therefore, it found that the transportation involved in that case was not subject to the Act.

which they may be established there can be no doubt that it is valid.

Valvoline did not lay any of its interstate pipe lines nor transport any oil by pipe line in interstate commerce until after August 28, 1906, the effective date of the pipe line amendment. By its own voluntary act, therefore, Valvoline subjected its property to the conditions of the statute and may not now be heard to say that enforcement of those conditions constitutes a violation of due process.

In *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125, this Court made significant use of the dictum of Mr. Justice Holmes, quoted above. In that case the action of a state in requiring a foreign corporation to operate its local private oil line as a common carrier was upheld on the ground that the state law, pursuant to which this action was taken, was in force when the corporation entered the state. The Court stated (p. 128):

> * * * the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. "By accepting the privilege it voluntarily consented to be bound by the conditions" attached to it (216 U. S. 56, 66), and, while enjoying the benefits of that privilege, it will not be

heard to complain that an order, plainly within the scope of statutes in effect when it entered the State, is unconstitutional. *A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in the* Pipe Line Cases, *234 U. S. 548, 561, in a single sentence, saying: "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."* [Italics supplied.]

But even apart from the fact that appellant began the interstate transportation of oil by pipe line after the effective date of the Act, the provisions of the Act do not deprive it of its property without due process of law. The purpose of the statute—to free the channels of interstate oil transportation from abuses which had arisen through common control of pipe line and refinery—is clearly within the Congressional competence, and the provisions of the Act as applied to appellant have a real and substantial relation to that object.

In many situations the possession of a pipe line is a strategic factor of the utmost importance in the petroleum industry. As a practical matter, the oil producer may well be completely shut off from the market if he does not have a pipe-line outlet. Furthermore, if he has access to only one pipe line, the owner of that line has it within his power to refuse

to receive any oil except such as is sold to him before it enters the pipe line, and otherwise to dictate the terms and conditions on which the oil shall be transported. Refiners in many cases must have access to pipe-line connections if they are to compete on equal terms with other refiners who have such connections. In the absence of regulation, therefore, a refiner who owns a line may possess substantial economic power over a large number of producers and over other refiners who are his competitors.

Under these circumstances there can be no substantial doubt that Congress was competent to prevent the economic power inherent in pipe-line ownership from being abused. See *The Pipe Line Cases*, 234 U. S. 548. Valvoline does not deny this, but asserts that it is only the main trunk pipe lines of the country which have such economic power. It contends that its operation, which is comparatively small, is incapable of participating in any evil on a national scale and consequently that the provisions of the Act are arbitrary and unreasonable as applied to it.

The contention is directly contravened by *Brass* v. *Stoeser*, 153 U. S. 391. That case involved the constitutionality of a North Dakota statute regulating all grain elevators without any restriction as to size or geographical location. The complainant elevator company sought to distinguish the prior decisions of the Court in *Munn* v. *Illinois*, 94

U. S. 113, and *Budd* v. *New York*, 143 U. S. 517, which upheld similar statutes of Illinois and New York, on the ground that those laws were "intended to operate in great trade centres, where, on account of the business being localized in the hands of a few persons in close proximity to each other, great opportunities for combinations to raise and control elevating and storage charges are afforded, while the wide extent of the State of North Dakota and the small population of its country towns and villages * * * present no such opportunities" (153 U. S. at 402). The evidence showed that there were about 600 grain elevators along the line of the Great Northern Railroad in North Dakota, that the business was keenly competitive throughout the State, and that at the very station where defendant's elevator was located two others were operating. The Court found in these factual distinctions no reason for denying the legislative power, stating (p. 403):

> These arguments are disposed of, as we think, by the simple observation, already made, that the facts rehearsed are matters for those who make, not for those who interpret, the laws. When it is once admitted, as it is admitted here, that it is competent for the legislative power to control the business of elevating and storing grain, whether carried on by individuals or associations, in cities of one size and in some circumstances, it follows that such power may be legally

> exerted over the same business when carried on in smaller cities and in other circumstances. • • •

See also *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201–202; *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 511–512, 514; *South Carolina State Highway Department* v. *Barnwell Bros., Inc.*, 303 U. S. 177, 190–191; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 154.

Moreover, there is no foundation in the record for the belief that the application of the Act to appellant may not result in the public benefits contemplated by Congress. The record is clear that should Valvoline refuse to purchase the oil of a producer, that producer would, in all save a few instances, have no other access to the market. That Valvoline has not in the past chosen to discriminate or prefer does not militate against its potential power to do so. It claims that the price which it pays for oil is governed by the competitive market and that it exercises no control over the price, yet it pays a premium of five cents a barrel over the posted market price on all oil moved in interstate commerce because "it is worth more to us" (R. 45). Clearly it is in control of this premium price, and were it to refuse to carry and the producers could transport their oil only by other carriers, they would lose at least the premium which their product presumably deserves. Moreover, Valvoline controls the delivered price which it charges the two independent refineries it is now

serving, and should it decide to cut off their supply; they would be forced to buy the mixed grade of the common carrier lines. That these producers or refineries may never have cause to complain is not important. The validity of the statute depends upon its effect in situations that may reasonably be conceived.

It is immaterial that Valvoline, as a small independent refiner transporting oil for the use of its own refinery, cannot exercise monopolistic control over the production and marketing of oil on a nation-wide scale. The test of whether it can be subjected to regulation is not whether it presently enjoys a monopoly, is large in size, or has engaged in evil practices. As this Court stated in *Nebbia* v. *New York*, 291 U. S. 502, 534, "The touchstone of public interest in any business * * * clearly is not * * * the enjoyment of a monopoly." See also *Brass* v. *Stoeser*, 153 U. S. 391. The real question is whether the company falls in the general category of enterprises which Congress can regulate in order to achieve a legitimate purpose. In view of the history of the oil industry and of the evils which Congress sought to eliminate by enactment of the Statute, the constitutional propriety of including all pipe-line companies within the scope of the regulation, irrespective of questions of size or degree, is beyond question.

CONCLUSION

It is respectfully submitted that the decree of the court below dismissing the petition for want of equity should be affirmed.

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OCTOBER 1939.

APPENDIX A

The pertinent provisions of the Interstate Commerce Act (Feb. 4, 1887, c. 104, 24 Stat. 379, as amended U. S. C., Title 49, Secs. 1, 19a), are as follows:

SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such

transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivery, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid; or

(b) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this part except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, includ-

ing all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

* * * * * *

SEC. 19a (a). That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this part whenever in its judgment such action is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners, who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier sub-

ject to the provisions of this part in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

* * * * * *

(d) Such investigation shall be commenced within sixty days after approval of this part and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right-of-way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this part shall have the full force and effect of law. Unless otherwise ordered by the Commission, with

the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

* * * * * *

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the commission, such carrier, receiver, or trustee shall forfeit to the United States the sum of $500 for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section 16 of this part.

(l) The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

APPENDIX B

Legislative Background of the Pipe-Line Amendment

A rich source of material throwing light on the background of the Act is the voluminous record in the case of *Standard Oil Co.* v. *United States,* 221 U. S. 1.[1] That record reveals clearly that it was not the practices of *bona fide* common carriers or carriers for hire of oil by pipe line that gave rise to the existing evils, but rather the common control and ownership of pipe line and refinery and the policy pursued by pipe-line companies of transporting only oil produced by them or purchased by them at the wells from the producing public.

When *The Pipe Line Cases* were before the Commerce Court in 1912, it was stipulated that the testimony taken in the case of *Standard Oil Co.* v. *United States, supra,* should be considered by that court in determining the meaning of the Pipe-Line Amendment. That court, after a consideration of this record and the record before the Commission,

[1] While the evidence in the *Standard Oil Company* case was taken and the case decided a few years after the passage of the Pipe-Line Amendment, the record was directed at conditions existing during the preceding two decades and reveals the facts with which Congress was undoubtedly familiar when, in 1906, it debated and enacted the Pipe-Line Amendment.

observed (*Prairie Oil & Gas Co.* v. *United States*, 204 Fed. 798, 801):

> Some of these pipe lines, aggregating a large mileage, are admittedly subject to public regulation, because their owners are public-service corporations engaged in the business of common carriers; but many of them belong to private companies, which use them only in the conduct of their private business. The private lines in most instances are owned or controlled by the refineries to which they transport crude oil and which they exclusively serve.
>
> The construction of pipe lines, such as are owned by these petitioners, involves a large outlay of capital, and few producers of the crude article are able to provide themselves with such a facility for marketing their output. Consequently, and because the cost of railroad transportation is prohibitive, the great majority of oil producers find it to their interest to sell at the wells to the owners of pipe lines, and, as a practical matter, may have no other alternative. For this reason it comes to pass that these private pipe line companies transport not only the oil supplied by their own wells, but also the much greater amount purchased by them from other producers.

Pipe lines were not originally included in the "rate bill" introduced in the Fifty-ninth Congress (first session), and not until the bill had passed the House and was being debated in the Senate was the amendment offered. Senator Lodge, of Massachusetts, offered it on May 4, 1906 (40 Cong. Rec. 6561), shortly after the receipt by the Senate of a special message from the President transmitting a summary of the report of the Commissioner of the

Bureau of Corporations on the subject of the oil industry.

Immediately Senator Foraker, of Ohio, arose to state (40 Cong. Rec. 6361):

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that it shall apply only to pipe lines operated for the public. I do not understand how you could compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private lines that an individual or a single corporation may have laid down and put into operation for its own benefit. * * *

Senator Nelson, of Minnesota, and Senator Lodge then replied:

> Mr. NELSON. In reference to the amendment suggested by the Senator from Ohio to the amendment of the Senator from Massachusetts, I desire to state that if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public." Practically the [original] amendment would be of no use at all. [Ibid. p. 6365.]
>
> * * * * *
>
> Mr. LODGE. Mr. President, the purpose of this amendment is to bring the transportation of oil and other commodities within the interstate-commerce law. Oil is one of the greatest articles of interstate commerce car-

ried in this country, and it is now absolutely outside and beyond any Government regulation whatsoever. * * * But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment. [*Ibid.*, p. 6365.]

* * * * *

Those well owners are absolutely at the mercy of the pipe lines. I have had cases brought to me, which in this fifteen-minute debate I cannot enlarge upon, where an independent refinery has been deprived of its supply of oil because it would not agree to the prices of the pipe lines. A small well owner is compelled to take the price that is offered by the controller of the trunk line. * * * The pipe-line companies buy the oil they use in their own refineries and owing to the fact that they buy the oil, if you put in the words "carry for the public," the pipe lines go right out from under this amendment, in my judgment. * * * There is no proposition * * * to push up the prices or push down the prices and make it impossible for a pipe line to operate. It is simply to give relief, if relief is sought, to those who find that they are not fairly treated, or think they are not fairly treated by the pipe lines, through which alone practically they can get their commodity to market. [*Ibid.*, pp. 6365–6366.]

During the course of the debate an attempt was made to amend the amendment so that it would apply only to carriers "for the public" or to "transportation for hire" or "for compensation"

(*Ibid.*, p. 7000), but it was unsuccessful. Senator Lodge vigorously opposed it, saying:

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment [40 Cong. Rec., p. 7000].

U. S. GOVERNMENT PRINTING OFFICE : 1938

SUPREME COURT OF THE UNITED STATES.

No. 25.—October Term, 1939.

Valvoline Oil Company, Appellant, vs. The United States of America and Interstate Commerce Commission.	Appeal from the District Court of the United States for the Western District of Pennsylvania.

[November 13, 1939.]

Mr. Justice Reed delivered the opinion of the Court.

The Valvoline Oil Company appeals[1] from the final decree of a three-judge district court for the Western District of Pennsylvania, under the Urgent Deficiencies Act,[2] dismissing a petition to enjoin and annul an order of the Interstate Commerce Commission. The order, requiring appellant to file with the Commission certain maps, charts and schedules of its pipe-line properties for use in valuing the properties under Section 19a of the Interstate Commerce Act, was made after a determination by the Commission that appellant was "engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act."

Through 1,426 miles of pipe line, running to 9,020 wells in Pennsylvania, West Virginia and Ohio, Valvoline gathers some 75,000 barrels of oil per month for its two refineries in Pennsylvania which manufacture the products distributed by Valvoline to the trade. All of this oil is purchased from producers at the well, 50 per cent originating in Pennsylvania, 38 per cent in West Virginia, and 12 per cent in Ohio. At the time of the final order of the Commission which it challenges here, Valvoline was selling surplus oil, not needed in its own operations, to a refinery in Pennsylvania and to another in West Virginia, but none of this came from out of the state of the refinery. Because, thus, it does not transport interstate other oil than that which it purchases at the well for its own use, Valvoline claims that it is not a common carrier of oil sub-

[1] Judicial Code § 238, 28 U. S. C. § 345.

[2] 38 Stat. 220, 28 U. S. C. §§ 47, 47a.

ject to the Interstate Commerce Act, or, should it be held to come within the terms of the statute, that the statute is unconstitutional as to it in that the provisions violate due process by taking the carrier's property for public use without compensation.

Appellant urges as reasons why it is not a common carrier within the provisions of the Interstate Commerce Act that its pipe lines are used primarily to transport oil to its own refineries, that it is not clothed with a public interest, that the oil flowing through its lines is not in commerce until after preparation for market, and that, since the purpose of Section 19a(a) and (e) of the Interstate Commerce Act in requiring valuation data is to furnish a basis for the establishment of traffic and rates, the report required is the first step in general regulation to which it is not subject. The pertinent provisions of the Act are set out in the margin.[3]

There is no controversy over whether appellant is an interstate pipe line company. Obviously it is. The contentions above are advanced to show it is not subject to the Act. Section 1(3) defines common carrier to include "all pipe-line companies." If this definition is not limited by the subsequent clause "engaged . . . as common carriers for hire," extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive.

The practice of compelling producers to sell at the well before admitting their oil to the lines was widely used as a means of monopolizing the product before the Hepburn Amendment in 1906.[4]

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[3] Sec. 1. (1) The provisions of this chapter shall apply to common carriers engaged in—

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water

From one State . . . to any other State. . . .

(3) The term "common carrier" as used in this chapter shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire.

Sec. 19a. (a) The Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter. . . .

(e) Every common carrier subject to the provisions of this chapter shall furnish to the Commission or its agents from time to time as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier. . . .

[4] 34 Stat. 584; see 40 Cong. Rec. 6365-66; Pipe Line Cases, 234 U. S. 548, 559.

Whether the oil so owned and transported was ultimately used by the carrier in its own operations or sold to others was in this connection immaterial. Certainly one would find a public interest in the sole means of transporting this commodity from thousands of wells for thousands of producers. This was covered by the *Pipe Line* decision. There it was stated that commerce is not dependent on title, "and the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce." The applicable section of the Interstate Commerce Act at the time of the *Pipe Line Cases* read:

> That the provisions of this Act shall apply to any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act.

This Court construed that section to cover those who were common carriers in substance even if not in technical form and read it that those "engaged in the transportation of oil . . . by means of pipe lines" shall be treated as common carriers under the Act. The last clause was held not "to cut down the generality" of the Act.

In the present Act there is a change of language but we perceive none in meaning. Speaking of the amendments of the Transportation Act of 1920, which recast the Hepburn Amendment into the present form, the House Committee on Interstate and Foreign Commerce reported that the section here under consideration "amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and classifying language in several respects, but making no important changes in policy."[5] As now written the section brings railroads under the Act by means of the last clause of subsection (3) only.[6] This clause is a conjunctive not a modifier. It does not affect the generality of the first clause as to pipe-line companies.

The appellant relies upon the *Pipe Lines Cases* to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the "sole purpose of conducting oil from its own wells

[5] Rep No. 456, Nov. 10, 1919, to accompany H. R. 10453, 66th Cong., 1st Sess.
[6] Cf. Pennsylvania R. R. v. P. U. Comm'n, 298 U. S. 170, 174.

to its own refinery." This was held not to be transportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.

Appellant presses its argument beyond the question whether it comes under the Act. If it does, it urges, the Act is in violation of the due process clause in that by the involuntary change of status from private to common carrier its property is taken. It looks upon the various regulatory provisions of the Interstate Commerce Act as inseparable from the valuation provisions of Section 19a(a) and (e). The losses feared, from present or future legislation other than the valuation provisions, may never occur. The data required by the present order may never be used to fix rates. No such information as to other pipe lines has been so used. Publicity alone may give effective remedy to abuses, if any there be.[7] This legislation was intended to free interstate commerce in oil from practices believed to be detrimental, and in that connection accessibility of valuation information to the Congress is essential. Its separate significance being apparent, we confine ourselves to Section 19a(a) and (e). The constitutionality of such requirements was settled by the *Pipe Line Cases* and we see nothing that excepts appellant from their effect. The smallness of the operation is immaterial.[8]

Affirmed.

Mr. Justice BUTLER took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[7] II Sharfman, The Interstate Commerce Commission 96.

[8] National Labor Relations Board v. Fainblatt, 306 U. S. 601, 606.